

DATE: November 13, 2007

In re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 07-05338

**DECISION OF ADMINISTRATIVE JUDGE
CHRISTOPHER GRAHAM**

APPEARANCES

FOR GOVERNMENT

Allison O'Connell, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 40-year-old administrative assistant and finance manager employed by a federal contractor. He established a pattern of alcohol abuse over a 20-year period, resulting in five alcohol related traffic offenses (December 1987, July 1992, June 1998, June 2001, and February 2005.) After attending alcohol awareness, education, and rehabilitation programs, he still continued to drink. He failed to successfully mitigate the security concerns about alcohol consumption. Clearance is denied.

STATEMENT OF THE CASE

On November 8, 2004, Applicant submitted a Security Clearance Application (SF 86).¹ The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on July 11, 2007, detailing the basis for its decision – security concerns raised under Guideline G (Alcohol Consumption). The President issued revised adjudicative guidelines (Guidelines) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the Guidelines are to be used in all cases when the SOR is dated on or after September 1, 2006. Because the SOR was issued after September 1, 2006, DoD policy requires that this case proceed under the revised guidelines.

Applicant answered the SOR in writing on August 10, 2007, and elected to have a hearing before an administrative judge. DOHA assigned the case to me on October 2, 2007, and issued a Notice of Hearing on October 9, 2007. I convened a hearing on October 16, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Applicant agreed to waive the rule requiring 15-days written notice of the hearing.² The government offered seven exhibits, marked as Exhibits 1-7. Applicant offered five exhibits, marked as Exhibits A-E. All exhibits were admitted without objection. I kept the record open until October 23, 2007, to give Applicant the time to file additional documents. He filed one exhibit consisting of three pages that was marked as Applicant's Exhibit F. The government had no objection and the exhibit was admitted. DOHA received the transcript (Tr.) on October 24, 2007.

FINDINGS OF FACT

Applicant admitted the allegations contained in the SOR. The admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 40-year-old administrative assistant and finance manager employed by a federal contractor.³ He is single. He is a high school graduate and has completed 71 hours for a degree majoring in information systems with a minor in accounting.⁴ He served in the United States

¹Government Exhibit 1 (Security Clearance Application (SF 86), dated November 8, 2004).

²Tr. at 5-6.

³*Id.* at 14, 16.

⁴*Id.* at 17-18.

Navy from 1986 to October 2006. He retired as a petty officer first class (E-6), and his service is characterized as honorable.⁵ He has held a security clearance continuously since 1986.⁶

Applicant consumed alcohol, at times to excess and to the point of intoxication, from approximately 1986 to at least May 2006.

In December 1987, Applicant drove into a telephone poll and was charged with driving under the influence and paid a fine.⁷ He refused a Breathalyzer test.⁸

And July 1992, Applicant ran a stop sign and kept going.⁹ He was arrested and charged with (1) fleeing from police, (2) reckless driving, and (3) driving under the influence. He was fined and ordered to complete community service and a Level II Alcohol Program for counts (2) and (3).

Applicant purchased a new car in June 1998, and decided to take it out for a test drive. He drove 120 miles per hour, was arrested, and charged with driving under the influence. He received a fine, and the military suspended his driving privileges for six months. He also lost base privileges for a period of time.¹⁰

Applicant was arrested in June 2001, and charged with driving under the influence. He was fined and ordered to attend an alcohol program. He received alcohol-related treatment from July 2001 to August 2001, at an alcohol rehabilitation center operated by the Navy.¹¹ This incident cost him a promotion.¹²

In February 2005, Applicant was found asleep in his car with the motor running and the lights on. He was arrested and charged with (1) driving while intoxicated and (2) operating a vehicle while intoxicated. He was fined and ordered to attend an alcohol prevention class.¹³

⁵*Id.* at 18.

⁶*Id.* at 20.

⁷*Id.* at 29.

⁸*Id.* at 35.

⁹*Id.* at 51.

¹⁰*Id.* at 57-60.

¹¹*Id.* at 60-65.

¹²*Id.* at 88.

¹³*Id.* at 24.

Applicant attended Alcoholics Anonymous (AA) from August 2001 to November 2001. He has not attended any AA meetings since November 2001.¹⁴ He underwent a 26-hour alcohol evaluation program a week before the hearing. The program director indicated that Applicant attended all sessions with a cooperative and positive attitude. He believed that Applicant had benefitted from the program and organized an increased his understanding of the need to avoid alcohol and other drugs. He also studied the negative effects on driving, and on one's self, family, and society.¹⁵ However the *curriculum vitae* of the director indicates he was not a duly qualified medical professional or a licensed clinical social worker.¹⁶

He abstained from drinking alcohol for two weeks prior to the hearing, primarily because of the security clearance process.¹⁷ Three character witnesses testified that they had never seen Applicant intoxicated or with the smell of alcohol on his breath. They also were unaware of the extent of Applicant's alcohol arrests.¹⁸

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the adjudicative guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process.¹⁹ An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge considers all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.²⁰

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 2(a): "(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5)

¹⁴*Id.* at 22.

¹⁵ Applicant's Exhibit F (Alcohol Program Completion Letter, dated October 12, 2007) at 1-3.

¹⁶*Id.* at 3.

¹⁷Tr. at 78, 88.

¹⁸*Id.* at 92-101.

¹⁹Guideline ¶ 2.

²⁰Guideline ¶ 2(c).

extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”²¹ In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”²² The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”²³ The burden of disproving a mitigating condition never shifts to the Government.²⁴

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

²¹Guideline ¶ 2(b).

²²“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²³Directive ¶ E3.1.15.

²⁴*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) “The Administrative Judge considers the record evidence as a whole, both favorable and unfavorable, evaluates Applicant’s past and current circumstances in light of the provisions of the Directive, and decide[s] whether Applicant has met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

The scope of an administrative judge's decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.²⁵

CONCLUSIONS

Guidelines ¶ 21. The Concern. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Guidelines ¶ 22. Conditions that *could raise* a security concern and may be disqualifying include:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent; and

(f) relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program.

The government established its case under Guidelines ¶ 22 (a) and (f). Applicant had five alcohol related traffic charges over a 20-year period. Even after attending alcohol awareness and rehabilitation programs he continued to drink alcohol.

Guidelines ¶ 23. Conditions that could *mitigate* security concerns include:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics

²⁵Executive Order 10865, § 7.

Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker.

None of the mitigating conditions apply. His most recent alcohol related arrest was in 2005. Even after repeated court-ordered alcohol related traffic programs he continued to drink. He stated he stopped drinking two weeks before the hearing, primarily because of the security clearance process. He has no established track record of abstinence. He last attended an AA meeting six years ago. His program director that certified his completion of an alcohol program for education on October 12, 2007, was not a duly qualified medical professional or a licensed clinical social worker. I conclude Guideline G against Applicant.

Whole Person Analysis

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”²⁶ “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”²⁷ In evaluating Applicant’s case, in addition to the disqualifying and mitigating conditions, I also considered the “whole person” concept in evaluating Applicant’s risk and vulnerability in protecting our national interests.²⁸ I considered his age (40), his education, his employment, and what might motivate him to continue his irresponsible conduct. This case raises questions about his reliability and judgment. Applicant is mature, has served 20-years in the military, has had several alcohol awareness, etc., programs, and yet continued to drink and violate the law by driving under the influence. His casual attitude to his use of alcohol and continued denial that he has a problem with alcohol is problematic. His history of alcohol consumption raises serious doubts about his ability to guarantee that such activity will not happen in the future. He stopped drinking two weeks prior to the hearing primarily because of his security clearance. His very recent decision to terminate his alcohol consumption is insufficient to justify a finding of a “pattern of abstinence” or that he “is making satisfactory progress.” The totality of the record raises reasonable and persistent doubts about Applicant’s ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance.

FORMAL FINDINGS

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline G:

AGAINST APPLICANT

²⁶Directive ¶ E.2.2.1.

²⁷*Id.*

²⁸*Id.*

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

DECISION

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is denied.

Christopher Graham
Administrative Judge